

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: U S WEST COMMUNICATIONS, INC., AND QWEST INC.	DOCKET NO. TF-00-140 (SPU-99-27)
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ORDER REJECTING COMPLIANCE TARIFF

(Issued June 28, 2001)

As a part of an approved settlement in this docket, Qwest Corporation (Qwest), f/k/a US WEST Communications, Inc., agreed to file a tariff with the Utilities Board (Board) specifying the terms and conditions of a wireless telephone loaner or subsidy program.

The loaner program is intended for customers whose orders for primary wireline service from Qwest are delayed for more than 15 business days. Those customers have a choice of either a wireless subsidy payment (intended to compensate the customer for the inconvenience and increased cost of having to use their existing wireless service as a wireline replacement) or a loan of a wireless telephone until Qwest can install permanent primary wireline service.

On August 23, 2000, Qwest filed a proposed tariff specifying the terms and conditions Qwest believes to be appropriate for the wireless substitute service program. In the cover letter accompanying the tariff filing, Qwest indicates the proposed tariff pages incorporate some, but not all, suggestions received by Qwest

with regard to this program. Qwest states that it continues to work with the Consumer Advocate Division of the Department of Justice (Consumer Advocate) in an attempt to answer Consumer Advocate's questions and resolve any issues.

On October 2, 2000, Consumer Advocate filed comments with the Board indicating Qwest and Consumer Advocate have resolved all but one issue concerning this filing: The reasonableness of the charge Qwest proposes to assess consumers who damage or fail to return wireless sets. Qwest proposes a charge of \$250 for lost, stolen, or damaged wireless sets. Consumer Advocate investigated Qwest's basis for the charge and learned that the price Qwest pays for wireless loaner telephones ranges from \$50 to \$150, depending upon the model. Consumer Advocate argues the \$250 charge could serve as a disincentive to customers eligible to participate in the program, as the risk of incurring such a charge may outweigh the benefits of substitute wireless service. Consumer Advocate suggests the charge for failure to return a working set should be limited to \$50 unless Qwest can show that a more expensive wireless set was loaned.

Qwest filed a response to Consumer Advocate's comments on October 31, 2000, arguing that \$250 is a fair and reasonable charge because it "encourages customers to return the equipment timely and in good working order by offering a significant financial incentive to do so." (Response at paragraph 4.) Qwest also states that the purchase price of the wireless sets range from \$50 to \$150, so a \$50 charge would not be reasonable for at least some of the units. Qwest further notes

that it incurs administrative expense when a set is not properly returned, although these expenses are not identified. (Qwest supplies the customers with a return box, packaging, and a return label to make the process of return easy for the customer.)

If, despite the simple return process offered by Qwest, a customer decides not to return the equipment or returns it in a condition that makes it unreasonable to expect another customer to use the phone, Qwest believes \$250 is a fair and reasonable charge. According to Qwest, it imposes the same \$250 charge in six other Qwest states where a wireless loaner program is offered.

The Board finds that there is no material factual dispute in this matter; the only disputed issue is whether the proposed charge is reasonable. Thus, pursuant to Iowa Code § 17A.10A, there is no need to set this matter for hearing and the Board can proceed to determine the reasonableness of Qwest's proposed tariff.

The Board finds Qwest's proposed \$250 charge is unreasonable. Qwest pays no more than \$50 to \$150 for these instruments; the only justification offered for charging more than the cost of the instrument is the administrative cost associated with the program. (See Qwest's response to Consumer Advocate data request No. 36-196, attached to Consumer Advocate's comments.) However, the Board finds that the administrative costs for a program that exists for the benefit of customers with missed wire dates should not be the direct responsibility of those customers. It would not be reasonable to assess a charge of \$250 to a customer who lost a \$50 phone when the customer only accepted the wireless set because Qwest was unable

to install primary wireline service in a timely manner in the first place. The administrative costs of this program should be viewed as an incentive not to miss installation dates, rather than a profit opportunity for Qwest. The Board will reject Qwest's proposed \$250 charge.

This leaves the question of what charge is appropriate. The Board understands Qwest's argument that if the charge is set equal to the cost of the lowest-cost telephone, customers who lose a more expensive telephone will not pay the full original cost of the unit they lost. However, Qwest's use of a wide cost range of telephones is Qwest's choice, not the customer's. ("Customers are not given a choice of models," according to Qwest's response to Consumer Advocate data request No. 36-196, part E.) Moreover, Qwest undoubtedly expenses or depreciates these instruments, as they lose value with age and advancing technology, so the actual value (book or market) of any particular instrument may be less than \$50, even if the original purchase price was \$150 or more. In other words, the original cost of any of these wireless units is, at best, only an indirect indicator of the value of any instrument at the time that a customer may lose it or damage it.

The Board will allow Qwest to include language in its tariff permitting a lost or damaged telephone charge equal to the original cost of the particular telephone instrument, but not to exceed \$150. However, the Board notes that Qwest apparently does not track individual instrument costs; in its response to Consumer Advocate data request No. 36-196, part E, Qwest says "[b]ecause Qwest has so many models

that it uses, Qwest finds it cost prohibitive to manage its inventory by model.

Therefore, it simply instructs its suppliers to send a cellular loaner with no distinction made on model.” If, as a result of its own bookkeeping practices, Qwest is unable to determine the original cost of a particular instrument that has been lost or damaged, then Qwest should bear the responsibility for any cost variations from the \$50 new cost for the least expensive telephone used in this program. The Board will direct Qwest to file replacement tariff pages setting forth a charge for a lost or damaged wireless telephone that is equal to the original cost of the instrument, but not to exceed \$150 and with a default charge of \$50 for any situations in which Qwest cannot establish the original cost.

Finally, in the cover letter accompanying Qwest’s August 23, 2000, filing, Qwest notes that the Board’s order in this docket directed the filing of tariffs setting forth the notice and terms and conditions of the cellular telephone loaner program. Qwest suggests that the description of its wireless loaner program is more detailed than is usually found in tariffs and asks that the notice and description be approved by the Board, without being filed as tariffs. However, Qwest indicates that if the Board believes a tariff format is appropriate, the information can be filed in that form.

The Board finds that all of the terms and conditions of the wireless loaner program should be included in Qwest’s tariff, even if the resulting pages are more detailed than the typical tariff. The public will benefit from including this information in Qwest’s tariff, where any interested member of the public would expect to find it,

rather than excluding it from the tariff and leaving the public (and the Board) without ready access to the detailed terms and conditions of this service.

IT IS THEREFORE ORDERED:

1. The proposed tariff filed by Qwest Corporation on August 23, 2000, and identified by the Board as TF-00-140 is rejected.
2. Qwest shall file new proposed tariff pages, consistent with the discussion in the body of this order, within 30 days of the date of this order. The new pages shall be in standard tariff format.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Acting Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 28th day of June, 2001.